

### **REMARKS**

In the Office Action, claims 14-24 were rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the invention. Claim 14 was rejected under 35 USC 102 (b) as being anticipated by Ruiz, U.S. Patent No. 6,129,722 ("Ruiz"). Claims 14-28 were again rejected under 35 U.S.C. 102(e) as being anticipated by Cox et al., U.S. Patent No. 7,130,835 ("Cox").

In this response, claims 14, 16, 25 and 26 have been amended. Claim 28 has been cancelled. Upon entry of the amendments, claims 14-28 will be pending, with claims having been withdrawn.

Reconsideration of the application in view of the amendments and the following remarks is respectfully requested.

### **Examiner Interview**

Applicants thank Examiner Farah for the courtesy of an interview with Applicants' representatives on September 2, 2009. Applicants and Examiner Farah discussed the rejection of claims 14-24 as being anticipated by Cox. Examiner Farah agreed that the claim limitation "performing a graphic simulation of the ablation in the form of a graphic visualization" was not present in Cox, and that the Cox rejections would be removed as would the rejections under 35 USC § 112. Examiner Farah also suggested withdrawing device claims 25-28 or specifically defining the pachymetry apparatus. No agreement was reached.

### **Rejections Under 35 U.S.C. § 112**

Claim 14 and dependent claims 15-24 thereof, were rejected under 35 U.S.C. §112 as being incomplete for omitting essential elements. Applicants respectfully submit that an "ablation device" is recited in the preamble of claim 14 and, as claim 14 recites a method, the positive recitation of an "ablation device" in the body of the claim is not required. Withdrawal of the rejection under 35 U.S.C. §112 is respectfully requested.

**Rejections to claims 14-24 under 35 U.S.C. § 102(e)**

Claims 14-24 were again rejected under 35 U.S.C. §102(e) as being anticipated by Cox et al. (U.S. Patent No. 7,130,835).

Cox describes a method that enables predictive outcomes for proposed therapeutic ophthalmic corrections including photoablative refractive surgical procedures and customized ophthalmic optics, which support a transactional model for providing the predictive outcomes. Cox describes the use of a graphical user interface (GUI) having a display and a selection device that facilitates the selection of collected information for analysis resulting in an outcome-predictive instruction for a proposed vision correction procedure. *See* Cox column 5, lines 6-10.

Independent claim 14 recites a method for controlling a device for an ablation of a part of a human eye that includes “performing a graphic simulation of the ablation in the form of a graphic visualization.” As amended, claim 14 also recites “determining optic and geometrical data of the eye, wherein the determining includes establishing a pachymetry data of the eye.” Support for the amendment is found, e.g., in paragraph [0006].

Applicants submit that Cox does not teach the step of “performing a graphic simulation of the ablation in the form of a graphic visualization.” Cox merely describes a predictive best outcome instruction based on historical data and the ophthalmic defect information about a patient. The Cox GUI merely facilitates selection of information for preparing results in an outcome-predictive instruction. However, as discussed during the interview, Cox does not teach any graphic simulation of any *ablation*, nor any such simulation that can be visualized.

Applicants further submit that Cox does not teach the step of “determining optic and geometrical data of the eye, wherein the determining includes establishing a pachymetry data of the eye.” Cox claims priority to a provisional application, and Cox is not wholly entitled to the prior art date, since provisional patent application 60/368,643 does not properly support the disclosure of “pachymetry,” which was later added to the Cox non-provisional patent application. The Cox

provisional application does not disclose establishing a pachymetry data of the eye. Moreover, pachymetry, as explained in the specification, is important to prevent "too small a residual thickness of the cornea." See Specification, paragraph [0006]. The Cox provisional does not even recognize or suggest the need for such a safety precaution in order to have successful post-operation results.

Accordingly, withdrawal of the rejections to claims 14-24 under 35 U.S.C. § 102(e) is respectfully requested.

**Rejections to claims 25-28 under 35 U.S.C. § 102 (e)**

Claims 25-28 were again rejected under 35 U.S.C. §102(e) as being anticipated by Cox et al. (U.S. Patent No. 7,130,835).

Applicants respectfully submit that Cox does not teach the feature of amended claim 25 wherein the device is configured to display an ablation of the eye graphically as an ablation map.

Claim 25 has been amended to include the feature of claim 28, wherein the device is configured to display an ablation of the eye graphically as an ablation map. As discussed during the interview, Cox does not teach any display of an ablation of the eye graphically as an ablation map or otherwise. Instead, the Cox GUI merely facilitates selection of information for preparing results in an outcome-predictive instruction. Therefore, because Cox does not teach a device capable of displaying an ablation of the eye as an ablation map, applicants submit that this claim is in condition for allowance.

Accordingly, withdrawal of the rejections to claims 25-28 under 35 U.S.C. § 102(e) is respectfully requested.

**Rejection to claim 14 under 35 USC § 102 (b)**

Claim 14 was rejected as being anticipated by Ruiz.

Ruiz describes a system and method for correcting corneal irregularities through reshaping of an eye's corneas to provide a desired corrective corneal curvature.

Applicants respectfully submit that Ruiz does not teach establishing a pachymetry data of the eye. Ruiz merely describes determining topographical data, that is, mapping the external surface curvature of the cornea. Ruiz does not describe establishing a pachymetry data of the eye, measurement of a thickness of a cornea of an eye, and instead describes a comparison of the topographical data with a reference sphere. The comparison of the external surface curvature of the cornea with a reference sphere does not establish an actual thickness of a cornea of an eye.

Withdrawal of the rejections to claim 14 under 35 U.S.C. § 102(e) is respectfully requested.

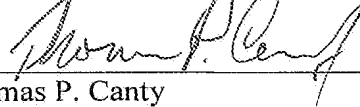
**CONCLUSION**

Applicants have amended claims 14 to include a feature of claim 16, and have deleted that respective feature in claim 16. Claim 25 has been amended to include the features of claim 28. In view of the above amendment, applicant believes the pending application is in condition for allowance.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, including any additional filing or application processing fees required under 37 C.F.R. §1.16 or 1.17, or to credit any overpayment, to Deposit Account No. 04-0100.

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Respectfully submitted,

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